

**REMARKS/ARGUMENTS**

Applicant has amended the claims as suggested by the Examiner during the telephonic interview with Charles Hanor, after consideration of the Rule 132 declaration, and as suggested in the office action. It is submitted that the claims as amended are allowable.

Applicant wants to make clear that its heater tube differs from prior art heater tubes in that burnishing is used to impart a polished look on the center portion of the heater tube. ~~Applicant's heater tubes are substantially identical in shape and size to prior art heater tubes which have been sold for over 20 years.~~ Although physically different because of the burnished finish, ~~Applicant's heater tube looks substantially similar to the prior art heater tubes without any magnification.~~

Also, burnishing machines are prior art to Applicant's invention. As set forth in the Rule 132 Declaration, Applicant obtained a prior art burnishing machine and used it in the conception and reduction to practice of his invention in 1999. ~~In 1999 Applicant purchased the same used burnishing machine from a used machine dealer he had used in 1988-89 in his first failed attempt to reduce his invention to practice.~~ Ten years after the first failed attempt, Applicant used this burnishing machine to conceive and reduce to practice his invention. In 1988-89 Applicant was unable to keep the burnishing machine for leaving rings on the viewing portions of the test tubes which rendered the tubes commercially unacceptable. Such rings make the test tubes unsuitable for use because the jet fuel test relies on viewing the deposits on the polished surface of the heater tubes.

The rings would interfere with this viewing. Applicant was also unable to maintain integrity of the tubes because the original attempt at burnishing would change the dimensions of the tubes.

Notwithstanding that abrasive polished heater tubes and burnishing machines are prior art, Applicant submits that his claimed invention is patentable. Applicant, while employed by the then only maker of heater tubes, attempted to make his invention in 1988-89 and was unable to get it to work satisfactory. Applicant tried and failed. Applicant, acting wholly independently, tried again beginning in 1999 and was ultimately successful.

In 2000, the successor of Applicant's former employer, Petroleum Analyzer Company, L.P., filed suit against Applicant claiming it owned Applicant's invention. See **Exhibit A**. This suit was dismissed with prejudice and thus finally decided the ownership of Applicant's invention. See **Exhibit B**. Notwithstanding that this prior suit constitutes res judicata and is a final determination as to ownership by Applicant of the invention of this patent application, Petroleum Analyzer Company, L.P. is again claiming ownership of the invention.

Out of an abundance of caution, Applicant wishes to apprise the Examiner that Petroleum Analyzer Company, L.P., has recently claimed that Applicant is not the sole inventor of the invention. See **Exhibit C**. Apparently Petroleum Analyzer Company, L.P. is asserting that Applicant is not the sole inventor and that other persons at Petroleum Analyzer Company, L.P. worked on the burnishing project and should be co-inventors. An insurmountable problem with this assertion is that the belated co-inventor

allegation would have to be based on the failed activities and attempts occurring in 1988-89. It can not be disputed that Petroleum Analyzer Company, L.P. abandoned the project as is evidenced by the fact that when Applicant went looking for a burnishing machine in 1999 he found the old burnishing machine he had used at Petroleum Analyzer Company, L.P. at a used machinery dealer and Applicant purchased it in 1999.

Apparently Petroleum Analyzer Company, L.P. has had a change of heart and has decided that Applicant's invention, that it abandoned in 1989, has become very valuable. This assertion of Petroleum Analyzer Company, L.P. sounds like a validity defense that might be used if Petroleum Analyzer Company, L.P. were to copy Applicant's invention. It is not apparent how Petroleum Analyzer Company, L.P. could claim rights to Applicant's patent now in view of the res judicata affect of the judgment in the law suit against Applicant and the abandonment of the failed attempt at the invention under 35 USC § 103(g) by Petroleum Analyzer Company, L.P. This is assuming anyone would believe the incredible story that the invention was successfully reduced to practice in 1988-89 at Petroleum Analyzer Company, L.P. but was not commercialized until 2000 by Applicant alone.

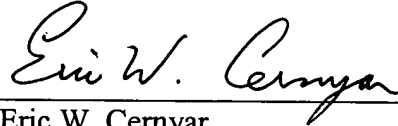
There are currently only two known makers of heater tubes, Applicant and Petroleum Analyzer Company L.P. Applicant is the only known entity that uses burnishing to polish heater tubes.

Although the Examiner took the position that using burnishing to polish heater tubes would have been obvious, it is submitted that the evidence shows the contrary. The amendments to the claims have been made solely to clarify that the claimed heater tube

and method are made by burnishing and that this is different from conventional polishing and that Applicant's heater tube is physically different than the prior art. Applicant has attempted to identify these physical differences and put them in the claims. However, the real difference is the use of burnishing which imparts these physical differences. Using burnishing in general to polish heater tubes would not have been obvious at the time Applicant made his invention.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,



Eric W. Cernyar  
Reg. No. 45,919  
Eric W. Cernyar, P.C.  
10401 Fox Hollow  
San Antonio, TX 78217  
210-863-0063  
210-590-9473 (FAX)  
e-mail: [ecernyar@satx.rr.com](mailto:ecernyar@satx.rr.com)